IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1041 OF 2005
IN
SECOND APPEAL NO.2356 OF 2004

Smt.Manibai Gautam Patil and Ors. ..Applicants
Versus
Smt.Kantibai Vinayak Patil and Ors. ..Respondents

Ms.Smita Shetkar for applicants
Mr.A.R.Pitale for respondents

CORAM : P.V.KAKADE, J.

DATE : 19TH AUGUST 2005

P.C.:

1. Heard the learned counsel for both the parties. Perused the record including the affidavit in reply.

2. The plaintiffs had filed the suit for partition and separate possession of their respective shares. The trial court decreed the suit holding that the plaintiffs had 1/2 share in the suit property and was entitled for separate possession thereof. However, the lower appellate court reversed the decree and dismissed the suit for partition. The present application is for

restraining the respondents-defendants from creating any third party interest over the suit property and part with possession of the suit property pending the appeal.

3. In view of the facts and circumstances, it is to be noted that if ultimately the plaintiffs wins in this appeal, he would be entitled 1/2 share and separate possession in the suit property, and therefore, it is necessary to protect the property for the said purpose. On the other hand by restraining the respondents-defendants from creating third party interest on the property or part therewith no prejudice would be caused to the defendants, as the properties are evidently in their possession and enjoyment.

4. In these circumstances the ends of justice would be met if the application is allowed. Hence, the application is allowed in terms of prayer clause (a) and disposed of with no order as to costs.